IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1415 OF 2007.

Hotel Jayshree Krishna Bar & Restaurant.... ....Petitioner
V/s
State of Maharashtra & Ors..... ....Respondents.

Mr.Pankaj C. Kansara, Adv. For the petitioner.

Mr.R.M.Patne, AGP for the respondent Nos.1, 2, & 4.

CORAM: A.P.DESHPANDE, J.
4/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The petitioner has established a restaurant and bar at Thane. The petitioner is in possession of license granted under the Bombay Police Act which is popularly known as Public Entertainment License. The said license has been renewed from time to time and is in force today. The petitioner being desirous of introducing additional activity in the form of an orchestra to be performed in the restaurant premises applied for the said permission to the Commissioner of Police, Thane. The said application came to be rejected by an order dated 28.7.06 on two grounds; one that some criminal cases have been filed against the petitioner during the year 2000-2005 and the said cases are pending and two that if and in case license to operate orchestra is granted to the petitioner the same may result in increase in number of customers which in turn would cause parking problem and obstruction to traffic.

2. In regard to first ground about pendency of criminal cases it is obvious that the same relate to the existing license granted to the

petitioner which has been renewed upto date. If this be the position, then respondent cannot on that ground refuse permission for an additional activity of operating an orchestra. So far as the other ground about likelihood of inadequacy of parking space is concerned the said ground is more based on apprehension. Learned counsel for the petitioner submits that the petitioner will file an appropriate undertaking with the authority that it shall not permit parking of vehicle in front of or nearby the restaurant premises. A further prayer is made for quashing the impugned order and remand the matter for reconsideration to the Commissioner of Police, Thane who after taking into consideration the undertaking which the petitioner proposes to file with the authority shall decide the question of granting license afresh uninfluenced by the impugned order. Learned additional government pleader appearing for respondents submits that respondent No.2 shall consider the application moved by the petitioner seeking license to operate orchestra uninfluenced by impugned order and in the light of the undertaking that the petitioner proposes to file. In this view of the matter I deem it appropriate to quash and set aside the impugned orders and remand the matter for fresh consideration of the application moved by the petitioner. In the result writ petition is partly allowed. Impugned orders are quashed and set aside. The petitioner is permitted to file appropriate undertaking with respondent No.2 in relation to parking space and the likelihood of congestion of traffic. Respondent No.2 shall decide the application of the petitioner in the light of undertaking so filed in accordance with law. I hope and trust that fresh decision shall be taken by the respondent No.2 after hearing the petitioner within a period of four weeks from the date of filing of undertaking. Rule made absolute in above terms.